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**NLRB GENERAL COUNSEL SEEKS COURT REVIEW OF COMBINED UNIT
OF BOARD-SIDE AND GENERAL COUNSEL-SIDE EMPLOYEES**

On June 25, 2007, National Labor Relations Board (NLRB) General Counsel Ronald Meisburg directed bargaining representatives of the Office of the General Counsel not to bargain with the National Labor Relations Board Union (NLRBU) in a bargaining unit combining employees from both the Board-side and General Counsel-side of the Agency. The combined unit had been recently certified by the Federal Labor Relations Authority (FLRA). Prior to the certification of a combined unit, General Counsel-side and Board-side employees had been in separate bargaining units for over 40 years.

The FLRA is the Federal agency responsible for overseeing collective-bargaining rights of federal employees, similar to the NLRB, which oversees collective-bargaining in the private sector. As with the NLRB, decisions of the FLRA regarding the appropriateness of a bargaining unit are not subject to direct judicial review. The only mechanism for the General Counsel to obtain judicial review of the FLRA's unit consolidation decision is to refuse to bargain with the NLRBU in the certified unit, as he has done, thereby drawing an unfair labor practice charge. The unit determination may then be reviewed through the unfair labor practice case process.

On June 27, 2007, the NLRBU filed an unfair labor practice charge with the FLRA, Washington Region, initiating the legal process for a test of the FLRA's certification of the combined unit.

General Counsel Meisburg's decision not to bargain reflects his strongly held view that the FLRA's consolidation decision (NLRB and NLRBU, 62 FLRA No. 9 (March 14, 2007)) conflicts with the National Labor Relations Act (the Act), which is the legislation that establishes the 5-member Board and the position of General Counsel. Under the Act, the General Counsel serves as an independent prosecutor of labor cases before the Board, which serves as a "court" to hear those cases. The FLRA decision would put the General Counsel in the position of bargaining with the NLRBU regarding Board support staff, and the Board in the position of bargaining with the NLRBU regarding General Counsel field office support staff and professionals, including line attorneys who prosecute cases before the Board.

In a message to agency employees informing them of his decision, General Counsel Meisburg observed,

I believe strongly that the FLRA erred in reaching its decision. Section 3(d) of the National Labor Relations Act establishes an independent General Counsel who has broad authority to prosecute unfair labor practices as well as supervisory independence over General Counsel-side employees. The FLRA's consolidation decision is in conflict with this statutory directive and blurs the lines of supervisory authority that are set out in the National Labor Relations Act.

In creating a single bargaining unit that includes both Board-side and General Counsel-side employees, the FLRA certification threatens the Section 3(d) independence of the General Counsel. This approach is contrary to both the intent of Congress and the express language of Section 3(d). On a practical level, this decision disrupts over 40 years of productive collective bargaining at the NLRB and places the independence of the General Counsel at risk.

I want all of you to know that my decision to test certification is rooted in my firm conviction that maintaining the independence of the General Counsel is fundamental to the functioning of this Agency. Until the FLRA's decision, Congress's choice to have two separate spheres of personnel authority – General Counsel and Board – was faithfully reflected in a bargaining unit structure that accorded both sides of the Agency final independent authority to determine terms and conditions of employment for their respective employees.

The General Counsel does not take this decision lightly. The General Counsel remains committed to collective bargaining with employees' elected representatives and has offered to continue recognition and bargaining with the NLRBU, albeit only with respect to the units comprised of employees of the Office of the General Counsel.

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